IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

Bail Appl..No. 6626 of 2007()

CC.815/2004 of J.M.F.C.-I, PUNALUR

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: PETITIONER

SAJI M.CHACKO, CHEMMANATHOOR HOUSE,
THAZHAMEN, ANCHAL P.O., ANCHAL.

BY ADV. SRI.P.PARAMESWARAN NAIR

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. SHIBI, D/O.USHA MARRY,
NELLIKUZHIYIL VEEDU, MANIYAR P.O.,
THOLIKKODU, PUNALUR.

3. STATION HOUSE OFFICER,
ANCHAL POLICE STATION, ANCHAL.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 31/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6626 of 2007

Dated this the 31st day of October, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under Section 498 A r/w 34 I.P.C. According to the petitioner, a private complaint was filed and the same was referred to the police under Section 156(3) Cr.P.C. After investigation, the final report was filed in which the petitioner was not arrayed as an accused. Subsequently the defacto complainant had filed a private complaint and later cognizance was taken against the petitioner on such private complaint. The case has been registered as early as in 2004. The petitioner has not appeared before the learned Magistrate so far. Coercive processes have been initiated against the petitioner by the learned Magistrate. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence earlier was not wilful or deliberate. He is willing to surrender before the learned Magistrate. But he apprehends that his application for regular bail may not be considered by the learned Magistrate on merits in accordance with law and expeditiously. Hence he prays that directions may be issued under Section 438 and/or 482 Cr.P.C may be issued in favour of the petitioner.

3. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

5. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate

must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

6. Hand over a copy of this order to the learned counsel for the petitioners.

(R.BASANT, JUDGE)

rtr/-